Supreme Court, U. S.
FILED
SEP 2 - 1980
MICHAEL RODAK, JR., CLE

No. 80-16

# In the Supreme Court of the United States

OCTOBER TERM, 1979

LAKESIDE POULTRY RANCH, INC., ET AL., PETITIONERS

*v.*

TIM WALLACE, ETC., ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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### QUESTIONS PRESENTED

1. Whether petitioner stated a cause of action pursuant to 42 U.S.C. 1983 for deprivation of federal rights "under color of state law."

2. Whether the district court erred in entering summary judgment for respondents because of the existence of a genuine issue of material fact.

3. Whether the Declaratory Judgment Act, 28 U.S.C. 2201, conferred jurisdiction on the district court to consider petitioner's challenge to the constitutionality of the Federal Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 29-34) is noted at 618 F. 2d 116 (table). The district court's order granting summary judgment (Pet. App. 21-23) and its memorandum and order denying reconsideration and amending the judgment (Pet. App. 26-28) are unreported.

## JURISDICTION

The judgment of the court of appeals was entered on April 7, 1980. The petition for a writ of certiorari was filed on Monday, July 7, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

In this action, petitioner, a producer of liquified egg products, sought monetary and injunctive relief against various state and federal officials in their individual and official capacities.[1] The complaint alleged that respondents had conspired to deprive petitioner of its constitutional and civil rights by conducting inspections of petitioner's plant under the Federal Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) ("Inspection Act") in order to harrass petitioner's employees, interrupt its production, and damage its business, and by denying petitioner a hearing after its egg product had been seized as unfit for human consumption. Petitioner also sought a declaratory judgment that the Inspection Act is unconstitutional.

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[1] The named defendants were the Secretary of Agriculture; three Department of Agriculture (USDA) supervisors who enforced the Federal Egg Products Inspection Act; the resident inspector at petitioner's plant; and the director of the state agriculture department.

The district court granted respondents' motion for summary judgment and dismissed the complaint (Pet. App. 21-28). The court found that respondents had acted under color of federal rather than state law and hence that petitioner had failed to state a cause of action pursuant to 42 U.S.C. 1983 (Pet. App. 27). The court also rejected petitioner's claim pursuant to 42 U.S.C. 1985(c) on the ground that the requisite allegation of an invidious or class-based conspiracy had not been made (Pet. App. 27). In addition, the court determined (*id.* at 22, 26) that respondents were entitled to judgment as a matter of law because their summary-judgment submissions established that they "were properly performing their duties" (*id.* at 22) and petitioner failed to raise a genuine issue of material fact regarding the existence of a conspiracy. With respect to the seizure of petitioner's egg product, the court held that petitioner's claims sought relief against the United States and therefore were barred by the doctrine of sovereign immunity (*id.* at 27).[2] Finally, the court concluded that it lacked jurisdiction to consider petitioner's challenge to the constitutionality of the Inspection Act (*id.* at 28).[3]

On petitioner's appeal, the court of appeals affirmed (Pet. App. 29-34). The court sustained the district court's rulings that neither 42 U.S.C. 1983 nor 42 U.S.C. 1985(c) provided a cause of action because respondents had acted under color of federal rather than state law and were not alleged to have engaged in a conspiracy involving invidious or class-based discrimination (Pet. App. 31-32).

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[2] The court recognized (Pet. App. 27) that petitioner could pursue its remedies in this regard under the Federal Tort Claims Act (28 U.S.C. 1346(b)).

[3] The court also noted (Pet. App. 28) that petitioner was litigating this issue in the government's forfeiture action concerning the seized egg product.

Moreover, agreeing with the district court that petitioner had failed to raise any factual issue, the court concluded (Pet. App. 32) that summary judgment was properly granted to respondents under *Butz* v. *Economou*, 438 U.S. 478 (1978), and *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974). The court also upheld the district court's determination that petitioner's claims relating to the seizure of its product sought relief against the United States and thus were foreclosed by the principle of sovereign immunity (Pet. App. 33). Finally, the court rejected the contention that the Declaratory Judgment Act (28 U.S.C. 2201) established jurisdiction in the district court to consider petitioner's constitutional challenge to the Inspection Act (Pet. App. 33-34).

## ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decisions of this Court or of the other courts of appeals. Moreover, the petition raises no issues of general public importance. Accordingly, further review is not warranted.

1. Petitioner contends (Pet. 9-12) that the resident inspector at its plant was acting "under color of state law" within the meaning of 42 U.S.C. 1983. The courts below correctly rejected this fact-bound contention. While formally employed by the state, the inspector was, as the district court specifically found (Pet. App. 27), "acting under color of the Federal Egg Products Inspection Act, a federal law." The inspector was enforcing the provisions of the federal statute[4] and was "closely supervised" by USDA officials (*id.* at 31). Moreover, the entire cost of the program, including the inspector's salary, was paid by the federal government (*ibid.*; see also 21 U.S.C. 1053). In

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[4]Indeed, the Inspection Act expressly preempts state law (21 U.S.C. 1052), and California's prior law on egg inspections had been repealed in 1971 after passage of the federal statute (Pet. App. 32).

these circumstances, the courts below properly determined that respondents had not acted "under color of state law." See, *e.g.*, *Askew* v. *Bloemker*, 548 F. 2d 673 (7th Cir. 1976). Since only federal action was involved, Section 1983 was therefore inapplicable. See, *e.g.*, *District of Columbia* v. *Carter*, 409 U.S. 418, 424-425; 429-430 (1973).

2. Petitioner also asserts (Pet. 13-15) that the district court erred in granting summary judgment to respondents.[5] The district court found (Pet. App. 22, 26), however, that the affidavits and other documents submitted by respondents established that they "were properly performing their duties" (*id.* at 22) and that petitioners had failed to raise a genuine issue of fact concerning the existence of a conspiracy (see Fed. R. Civ. P. 56(e)), and these determinations were upheld by the court of appeals (Pet. App. 32).

This application of Rule 56 is also supported by the Court's admonition in *Butz* v. *Economou*, 438 U.S. 478, 507-508 (1978), that

> [i]nsubstantial lawsuits [against government officers] can be quickly terminated by federal courts alert to the possibilities of artful pleading. * * * [D]amages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity. * * * In responding to such a motion, plaintiffs may not play dog in the manger; and firm application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits.

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[5]Petitioner has contested (Pet. 13-14) the propriety of summary judgment only with respect to the resident inspector and not with respect to the USDA officials.

See also *Baker* v. *McCollan*, 443 U.S. 137, 139 (1979); *Procunier* v. *Navarette*, 434 U.S. 555, 565 (1978); *Scheuer* v. *Rhodes*, 416 U.S. 232, 250 (1974). Faithful to this directive, the courts below properly applied Fed. R. Civ. P. 56 in granting summary judgment to respondents.

3. Petitioner lastly argues (Pet. 15-16) that the district court had jurisdiction under the Declaratory Judgment Act (28 U.S.C. 2201) to decide the constitutionality of the Inspection Act. However, it is well settled that the Declaratory Judgment Act does not confer subject-matter jurisdiction on the federal courts. See, *e.g.*, *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671-672 (1950). Accordingly, there was no authority to consider the merits of petitioner's challenge in this proceeding.[6]

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1980

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[6]As the courts below noted (Pet. App. 28, 33-34), petitioner has also raised this constitutional issue in the government's forfeiture proceeding arising out of the seizure of petitioner's goods as unfit for human consumption.

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